IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 2253 of 2007(R)

PETITIONER:

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1. ABDUL REHUMAN KUNJU,
   LUBEENA MANZIL, PALLITHOTTAM,KOLLAM.

2. A. SIRAJUDEEN,
   LUBEENA MANZIL, PALLITHOTTAM, KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENTS:

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1. STATE OF KERALA,
   REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. ASSISTANT COMMISSIONER (ASSESSMENT)-III,
   COMMERCIAL TAXES SPECIAL CIRCLE, KOLLAM.

3. DISTRICT COLLECTOR, KOLLAM.

4. TAHSILDAR (R.R),
   OFFICE OF THE TAHSILDAR, KOLLAM.

5. S. PONNAN PILLAI,
   LATHA BHAVAN, MEVARAM, KATTAMALA, KOLLAM.

R1 TO 4 BY G.P. SRI.C.K.GOVINDAN
SRI.K.S.MANU (PUNUKKONNOOR)
SRI.P.SREEKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

P1: TRUE COPY OF SALE DEED NO.2495/1987 OF KOTTIYAM SRO, DT.30.9.87.

P2: .DO. NO.2017/2001 .DO. DT.15.1.2001.

P3: TRUE COPY OF JUDGMENT OF THIS HON'BLE COURT IN O.P. NO.1227/2002, DT.11.7.2002.

P4: TRUE COPY OF REPRESENTATION SUBMITTED BY THE 2ND PETITIONER BEFORE R4 DT.22.8.2006.

P5: TRUE COPY OF NOTICE BEARING NO.3797/88 ISSUED BY R4 DT.20.11.2006.

P6: TRUE COPY OF NOTICE PUBLISHED BY R4 DT.28.12.2006.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.2253 of 2007

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Dated this the 7th day of September, 2007.

JUDGMENT

The petitioners purchased property in 2001 from one Nazrudeen who in turn purchased property from 5th respondent, a defaulter for huge arrears of sales tax above Rs.37 lakhs. It is stated in the counter affidavit that as on the date of sale by defaulter, revenue recovery notice was already issued and therefore, sale is invalid by virtue of Section 44(2) of the Kerala Revenue Recovery Act. If property was subject to charge, then subsequent purchase by the petitioners also will be subject to the same charge. I do not think there is any need for this court to decide whether the State can ignore the sale deeds and proceed for sale because it is for the 4th respondent to verify the records pertaining to notice issued demanding payment and subsequent transactions of sale. If petitioners want to retain the property, petitioners have to clear the arrears of tax and I give an opportunity to the petitioner to settle liability by clearing the arrears of tax with 50% of interest due under Section 23(3) of the KGST Act , if arrears are paid before 31.10.2007. It will be open to the petitioners to claim the amount from the seller or the original defaulter after clearing the arrears. However, if petitioners do not

want to settle liability, then they can file claim petition before the 4th respondent who will verify the assessment records and revenue recovery proceedings initiated and consider the validity of first sale and subsequent sale with reference to Section 44(2) of the Revenue Recovery Act read with Section 53 of the Transfer of Property Act and if sale is invalid, he will declare so and proceed with attachment and sale of property. If the statutory provisions do not create charge on the property of the defaulter, fourth respondent-Tahsildar will release the property to the petitioners. The Tahsildar will hear the petitioners and dispose of the claim petition within one month from date of filing the same by the petitioners. The claim petition should be disposed of before sale of the property. Stay against sale of property will continue for two months from now within which time matter will be finally decided.

C.N.RAMACHANDRAN NAIR
Judge

pms